

## **EXHIBIT B**

1                   UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF MASSACHUSETTS  
3   IN RE: PHARMACEUTICAL         )  
4   INDUSTRY AVERAGE WHOLESALE ) MDL NO. 1456  
5   PRICE LITIGATION             ) CIVIL ACTION:  
6   THIS DOCUMENT RELATES TO    ) 01-CV-12257-PBS  
7   U.S. ex rel. Ven-A-Care of ) Judge Patti B. Saris  
8   the Florida Keys, Inc. v.  )  
9   Abbott Laboratories Inc.,    ) Chief Magistrate Judge  
10   No. 07-CV-11618-PBS         ) Marianne B. Bowler

11

12                   VIDEOTAPED 30(b) (6) DEPOSITION OF  
13                   JOHN M. LOCKWOOD, M.D.

14

Volume I

15

(Taken by Defendant Abbott Laboratories Inc.)

16

April 23, 2009

17

9:27 a.m.

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Suite 800

19

1420 Peachtree Street, N.E.

20

Atlanta, Georgia

21

Reported by: F. Renee Finkley, RPR, CRR, CLR,

22

CCR-B-2289

1 concepts for the Ery case?

2 A. I think I just took it on as a project for  
3 myself.

4 Q. And let's just be clear about one thing.  
5 You and I during the course of this deposition will  
6 sometimes refer to the Erythromycin drugs as Ery, and  
7 that's clear, right?

8 A. That would be fine, yes.

9 Q. When did you --

10 A. Well, to the extent we're talking about  
11 the oral Erythromycins for this case.

12 Q. Yes. Yes. That's correct. And again,  
13 that -- this case -- might as well, while we're on  
14 the subject, mark the -- I'm going to mark a copy of  
15 the complaint and its exhibits as Exhibit 2 for this  
16 deposition.

17 (Exhibit Lockwood Ery 002 was  
18 marked for identification.)

19 Q. (By Mr. Berlin) Here you go,  
20 Dr. Lockwood. What I've handed you is Exhibit 2,  
21 which is a copy of the complaint in this case and the  
22 exhibits to the complaint. Just so we're clear about

1       the -- and I'm going to get to the complaint in more  
2       detail later, but just as a preliminary issue, when  
3       we refer to Ery or the Erythromycins at issue in the  
4       case, those are the NDCs that are listed in paragraph  
5       33; is that correct?

6           A.     Yes.

7           Q.     And going back to your previous answer  
8       about why you're testifying here today, you said that  
9       you took on the job of spending time to work and  
10      develop the concepts for this case. When did you  
11      first embark upon that task?

12          A.     I would say in particular, just to these  
13      drugs and this complaint, sometime in 2000.

14          Q.     And we'll get to this in much greater  
15      detail later, but what led you to look at these  
16      particular drugs, the drugs listed in -- at least  
17      some of the drugs listed in paragraph 33 in 2000?

18          A.     I was looking at some of our pricing data  
19      and I noticed a couple of things about these drugs.  
20      These were Abbot Pharmaceutical Products Division  
21      drugs, PPD drugs. It was known to me that Abbott PPD  
22      was primarily a brand company. I knew some of these

1       drugs are brands and I noticed discrepancies between  
2       the prices that we could buy these drugs from the  
3       wholesalers and the reported WAC prices; and I  
4       noticed that there was generally a relationship, a  
5       very consistent relationship between the normal  
6       Abbott brand drugs at Pharmaceutical Products  
7       Division, they're more typical brands, I guess.

8                 There was a very solid repeatable  
9       relationship between the wholesale -- the -- I guess  
10      I need to say this properly, the wholesale catalog or  
11      list price, whatever, the wholesaler's catalog price  
12      and the average wholesale price and the catalog  
13      wholesaler's price and the reported WAC.

14               And for these particular drugs I found  
15      those relationships were not the same as the other  
16      brand drugs at PPD. And it stuck out -- it stuck out  
17      to me when looking at that. And I spent more time  
18      looking and understanding why that was the case and  
19      what was causing it and understanding that because I  
20      quite simply thought that there was perhaps a  
21      fraudulent misrepresentations in prices for these  
22      drugs.

1           Q.     And did you reach any sort -- any  
2     conclusion as to what was causing this discrepancy  
3     that you described?

4           A.     Well, I think the most common or the -- I  
5     guess the thing that stood out most was that when I  
6     looked at Abbott's reported wholesale acquisition  
7     cost, their WAC price for these drugs, that that  
8     price in many circumstances was way above the price  
9     that I could buy this drug from McKesson at their --  
10    it's termed a lot of different things, they're  
11    wholesale catalog list price, their noncontract  
12    price, meaning the price that the wholesaler would  
13    sell that drug to you without a contract, just a  
14    simple relationship, wholesaler/pharmacy  
15    relationship, and that I could buy these drugs for  
16    less than what Abbott was reporting that they were  
17    selling the drugs to the wholesalers for.

18           And that was not the situation with  
19    Abbott's other brand drugs, meaning that the prices  
20    that I could buy -- I don't know. Let's take a drug  
21    like Biaxin, perhaps, or Depakote. The catalog list  
22    price, noncontract price for those drugs was very

1 close to, similar to, or identical to the reported  
2 wholesale acquisition cost on those drugs. But for  
3 these Ery drugs, that was not the case.

4 And that led me to believe that, number  
5 one, the catalog price that I was buying it at, to my  
6 understanding in our conversations with McKesson, was  
7 slightly above their acquisition cost, 2 to  
8 5 percent, in that range. So it led me to believe  
9 that McKesson was actually buying the drug for less  
10 than what I was buying it for, meaning they were  
11 selling it to me with some markup.

12 And -- and I saw that as a big problem,  
13 actually, with these drugs and that it looked like  
14 WAC fraud to me, meaning that they were -- that  
15 Abbott was not honestly reporting their wholesale  
16 acquisition cost on these drugs.

17 Q. I'd like just to back up to one thing you  
18 said so that we're clear for the jury who might be  
19 listening to this videotape. Do you understand that  
20 Abbott, prior to 2004, had a Hospital Products  
21 Division often referred to as HPD?

22 A. I am aware of that, yes.

1 organized that we had a specific task list about what  
2 to do, but we started looking at some oral drugs  
3 and -- and in particular looking at the FUL issue.  
4 And that ultimately led to me looking at -- so, I  
5 mean, I looked at lots of other manufacturers too.  
6 It's not like I only looked at Abbott. But I looked  
7 at these drugs and looked at PPD and found what I  
8 thought were discrepancies and problems with these  
9 drugs in terms of their price reporting.

10 Q. When you sat down to look at this issue,  
11 describe how you went about doing that, I mean sort  
12 of the mechanics of and the documents that you used  
13 to try to evaluate the issue.

14 A. Well, we had a number of things available,  
15 meaning we had a number of different price lists  
16 available, and we had McKesson catalogs that went  
17 back I think to 1992, which contained prices on these  
18 drugs or many of these drugs. We had some Bergen  
19 Brunswig printouts that contained prices on these  
20 drugs.

21 And during 2000 we had been essentially  
22 shifted by McKesson from the catalogs into an

1 electronic version of their catalog called Econolink  
2 that was on a computer, so that I basically did a  
3 printout or looked at the Abbott drugs listed in  
4 Econolink, because I guess it was user-friendly or it  
5 was computerized, whatever, and really looked at and  
6 saw and noticed the discrepancies between the  
7 so-called regular costs at McKesson, which is their  
8 catalog price, list price, noncontract price, variety  
9 of different names for it, and the AWPs.

10 And during 2000 I was able to -- I did a  
11 number of things. I was able to print that Econolink  
12 database to a file, a text file. And during 2000 and  
13 perhaps a little bit earlier, but mainly during 2000,  
14 one of my other projects was to learn and teach  
15 myself how to use Microsoft Access, which is a  
16 software program that allows you to manipulate  
17 databases.

18 So one of the things I was able to do was  
19 to import the text file from this electronic catalog  
20 into Microsoft Access, including all the pricing  
21 data, times, dates, the whole thing as a text file.  
22 And then I was able to essentially investigate this

1 more by creating new columns where I would, for  
2 instance on an investigative level, divide the  
3 average wholesale price by the regular cost, the  
4 catalog price. That would give me a ratio. And then  
5 I could --

6 Q. I'm sorry. Which number was the numerator  
7 and denominator?

8 A. The AWP that was in that program divided  
9 by the noncontract catalog price, regular cost  
10 column, what -- there were a number of different  
11 names for this column, and that gave me a ratio;  
12 essentially divide the AWP by the regular cost  
13 column.

14 That showed me that for the bulk of the  
15 Abbott PPD drugs, that that ratio was 1.25, as I  
16 recall. Now, this is a -- kind of an interesting  
17 math issue, but in -- as I recall -- and I'd probably  
18 have to sit down, do the math again. But I think if  
19 you add 20 percent to the WAC price -- First Data  
20 Bank was doing that to arrive at an AWP, but the  
21 reverse of that gives you a 1.25 ratio. It's a  
22 little bit -- it's a math glitch.

1           But suffice it to say that for all the PPD  
2 drugs, that ratio was about 1.25. For the -- mainly  
3 the drugs in this complaint, that ratio was  
4 significantly higher, and it varied from drug to  
5 drug, but significantly higher, so that it allowed me  
6 to also look at -- I ultimately looked at the  
7 reported WACs on those and found, I felt, consistency  
8 in the other PPD drugs that -- they're typical brand  
9 drugs. The regular cost column was very consistent  
10 with the reported wholesale acquisition cost, and for  
11 these Ery drugs, it was inconsistent.

12           I then also looked at these drugs in  
13 regards to the FUL. And for many of the drugs that  
14 were initially filed -- and I think with our initial  
15 notice and whatever, disclosures, whatever those  
16 legal terms are, but one of our initial letters to  
17 the government on this, we pointed out that -- at  
18 least in our opinion, that had Abbott reported what  
19 we assume were the real wholesale prices, which were  
20 actually below the price we were getting it -- and  
21 we're assuming 2 to 5 percent below -- that in many  
22 of those cases, had Abbott, in our opinion, reported

1 truthfully what the -- they were really selling the  
2 drug to the wholesaler for, that the federal upper  
3 limit would have been a different number than what it  
4 was or that the federal upper limit for these drugs  
5 that -- that, you know, was being paid at that time.

6 We also thought that -- it appeared that  
7 these drugs were all markup company drugs, that First  
8 Data Bank was dealing with them as a markup basis and  
9 that if they had truthfully reported the WAC prices  
10 and -- to First Data Bank, that an AWP would have  
11 been calculated, which was significantly lower than  
12 the AWP that we were seeing in the data sources, and  
13 in many cases, if not all of the initial cases -- I'd  
14 have to look at them, look at the letter; we can look  
15 at that letter if you like -- that the AWP for these  
16 drugs would have been below the federal upper limit.

17 (Discussion off the record.)

18 Q. (By Mr. Berlin) While you were talking, I  
19 believe what we got was the additional -- the copies  
20 of your transcript of your previous depositions,  
21 which we haven't needed to refer to. But I just  
22 wanted you to have a copy just in case you wanted to

1 want me to sit down with him and try to recreate  
2 that.

3 MR. BERLIN: Yeah. That's fine. Why  
4 don't we skip this question.

5 MR. BREEN: As long as it's clear it's not  
6 a 30(b) (6) question.

7 MR. BERLIN: That's correct.

8 MR. BREEN: I'll be happy to help the  
9 witness give the best answer possible.

10 MR. BERLIN: That he can give.

11 MR. BREEN: Understanding that --

12 MR. BERLIN: I appreciate that.

13 MR. BREEN: -- there's a lot of cases.

14 Q. (By Mr. Berlin) And just to be clear,  
15 Ven-A-Care does have a financial stake in this  
16 litigation, right?

17 A. Yes, sir, like we do in all these qui tam  
18 cases, as I understand. And our lawyers certainly  
19 have a stake in it.

20 Q. And again, another question to update is  
21 is Ven-A-Care still a licensed pharmacy?

22 A. Yes, sir.

1           Q.     And what does that mean to be a licensed  
2        pharmacy?

3           A.     It means that we have met the State of  
4        Florida's requirements for a pharmacy license.

5           Q.     And can you describe for the jury, just in  
6        general terms, what those requirements are?

7           A.     Is this part of the designation or no or  
8        is this something different?

9           Q.     These areas that I'm going into right now  
10      are just some background information that --

11          A.     Okay, cause I can't tell you that I  
12      prepared --

13          Q.     That's okay.

14          A.     -- for this.

15          Q.     That's fine. And I'll -- specifically for  
16      everyone's comfort, I'll specifically designate this  
17      as outside the 30(b)(6). So if you can answer that  
18      just to the best of your personal knowledge.

19          A.     Well, my -- I think you have to either  
20      have or employ a pharmacist who has the appropriate  
21      training and licensure and then you have to meet a  
22      variety of standards set up by the Florida board. Am

1 I familiar with every one of those? No. I guess I'd  
2 refer you to the Florida Department of Professional  
3 Regulation and their requirements for pharmacy.

4 Mr. Cobo, who is our pharmacist, really  
5 deals with that matter, and my experience with it is,  
6 I would say, peripheral. I know he does it. I know  
7 that he maintains it, but I don't know all the hoops  
8 he jumps through.

9 Q. Does Ven-A-Care have to pay any fee to the  
10 State of Florida or to anyone to maintain the  
11 license?

12 A. Every license I've ever got in the State  
13 of Florida had some fee associated with it, yes.

14 Q. And is it still true that Ven-A-Care has  
15 not seen a patient since approximately 1998?

16 MR. BREEN: Objection to form.

17 THE WITNESS: I think that would probably  
18 be correct. I think that's been testified to  
19 many times before, and I'm not aware of any --  
20 any new ones, no.

21 Q. (By Mr. Berlin) That's what I was getting  
22 at. You did testify to that on page 169 of your

1 deposition. And really what I was asking is, is that  
2 still true in a sense that since that time,  
3 Ven-A-Care has not seen patients?

4 MR. BREEN: Objection to form.

5 THE WITNESS: Well, I don't think we  
6 have -- yes. I don't think we have any new  
7 ones, no.

8 Q. (By Mr. Berlin) So why has Ven-A-Care  
9 maintained its pharmacy license if it's not seeing  
10 any patients?

11 A. Well, for a number of reasons. We have  
12 over the years many times talked about getting back  
13 into the pharmacy business in different ways. And I  
14 think some of this has been talked about, but we want  
15 that opportunity and availability. Certainly we are  
16 interested in the pharmaceutical world. We're  
17 interested in pharmaceutical pricing and in  
18 particular we're interested in fraud, what we  
19 perceive as fraud by manufacturers.

20 So I think we want to main -- much like I  
21 maintain my medical license. I'm not doing a lot of  
22 orthopedics, but I do my continuing medical education

1 and I understand Mr. Cobo does that as well, keeps us  
2 up to date and informed. So we keep our license for  
3 a number of reasons I would say.

4 Q. I'm going to shift to a new topic, which  
5 is Abbott's pricing and marketing of the Ery drugs  
6 named in the complaint, and those are the topics one  
7 and nine in the notice.

8 A. Okay.

9 Q. You don't need to refer to them. My  
10 questions will be specific enough, but I just wanted  
11 to indicate to you that we were going to change  
12 topics.

13 MR. BREEN: Is this a good time for a  
14 break? We've been going for about another hour.  
15 How much time do we have on the tape?

16 THE VIDEOGRAPHER: 20 minutes.

17 MR. BREEN: It's up to you guys, break  
18 down and have another session before lunch.

19 MR. BERLIN: Well, just the problem is  
20 with 20 minutes, I would think that we would  
21 stay on this tape.

22 MR. BREEN: Okay.